

IN THE HIGH COURT OF KARNATAKA : AT BANGALORE

DATED : 28TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE K.H.N.KURANGA

C.R.P. NO.404 OF 1998

Between:

Sri S.N.Bhaskar Rao
S/o Narahari Shet,
Transport Operator,
B.H.Road, Sagar,
Shimoga District.

Petitioner

(By Sri S.Harish Kumar,
Advocate for petitioner)

And:

Canara Bank,
Having its Head Office,
at Jayachamarajendra Road,
Bangalore, and one of
its Branch at Sagar,
Shimoga District

Respondents

[Defendants 1 and 2 are not made parties since
no relief was prayed against them in the trial
court and their right is not affected by
virtue of this Revision Petition]

This Civil Revision Petition is filed
under Section 115 of the Code of Civil
Procedure against the order dated 4-11-1997
passed in O.S.No.12 of 1980 on the file of the
Civil Judge and Additional CJM, Sagar,
dismissing I.A.No.49 filed under Order 13 Rule
1 and 2 of the Code of Civil Procedure.

This petition is coming on for admission,
this day, the Court made the following:-

ORDER

The petitioner is defendant No.3 in O.S. No.12 of 1980 on the file of the Civil Judge, Senior Division, Sagar. He has, in this petition, challenged the order dated 4-11-1997 passed by the court below on I.A.No.49 filed under Order 13 Rules 1 and 2 C.P.C. in the said suit, rejecting the same.

2. The petitioner filed I.A.No.48 under Section 151 of the Code of Civil Procedure and under Sections 139, 140 and 141 of the Indian Contract Act with a request to discharge him from the liability of paying the suit claim. He filed I.A.No.49 under Order 39 Rule 1(2) of the C.P.C. with a request to look into the photographs produced along with the application while considering I.A.No.48. He has also filed I.A.No.50 under Order 11 Rule 1 of the C.P.C. with a request to furnish the better particulars as prayed for in the application.

3. The court below has rejected all the three applications by the impugned order.

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4. The petitioner has not challenged the orders passed dismissing the applications I.A. Nos.48 and 50; but, he has challenged only the order rejecting the application I.A.No.49. The petitioner filed the written statement and let in evidence stating that he stood as surety to the first defendant at the time of availing the loan. After leading the evidence on his side, he has closed his side and thereafter, he has filed the applications I.A. Nos.48 to 50.

5. The court below has held I.A.Nos.48 and 49 are not maintainable at this stage on the basis of the interim applications filed by the petitioner. he cannot be discharged from the liability of paying the suit claim. The court below has observed that if the petitioner satisfies the Court that he is not at all liable to pay the suit claim to the plaintiff, the suit filed by the plaintiff is liable to be dismissed and the prayer of the petitioner to discharge him at this stage cannot be granted and accordingly, dismissed I.A. Nos.48 and 49.

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6. The order passed by the Court below, in the circumstances of the case, in my opinion, is just and proper and it is not a fit case for admission and the petition filed by the petitioner is liable to be dismissed and accordingly, it is dismissed.


(K.H.N.KURANGA)
JUDGE

KBN/-